

SENATE BILL 1242

By Cooper

AN ACT to amend Tennessee Code
Annotated, Title 8; Chapter 25, Parts
1, 3, and 5, relative to deferred or tax
sheltered compensation programs for
public employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 25, Part 1, is amended
by adding the following new section:

8-25-110. Production of records described in subpoena.

(a) Except as hereinafter provided, when a subpoena duces tecum is served upon any person or entity administering or providing services to a deferred compensation plan established pursuant to this part in an action or proceeding in which the person or entity is not a party, and such subpoena requires the production of all or any part of the records of the deferred compensation plan relating to a present or former plan participant, it shall be sufficient compliance therewith if the person or entity within fourteen (14) days after being served with a subpoena duces tecum, shall, either by personal delivery or certified or registered mail, file with the court clerk or the issuer, a true and correct copy (which

may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records specifically described in such subpoena.

(b) The records shall be accompanied by an affidavit of a custodian, stating in substance that:

(1) The affiant is the duly authorized custodian of the records and has authority to certify the records; and

(2) The copy is a true copy of all the records described in the subpoena.

(c) If the person or entity has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner prescribed in this section.

(d) (1) The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit.

(2) The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary.

(3) When more than one (1) person has knowledge of the facts, more than one (1) affidavit may be made.

(e) The personal attendance of the custodian may be commanded only if personal attendance is necessary to resolve a good faith dispute concerning the accuracy of the information to be furnished. Where personal attendance of the custodian is required, the

subpoena duces tecum shall contain a clause which reads: "The procedure authorized pursuant to § 8-25-110 will not be deemed sufficient compliance with this subpoena".

SECTION 2. Tennessee Code Annotated, Title 8, Chapter 25, Part 3, is amended by adding the following new section:

8-25-308. Production of records described in subpoena. The provisions of § 8-25-110 shall apply whenever a subpoena duces tecum is served upon any person or entity administering or providing services to a profit sharing and/or salary reduction plan established pursuant to this part.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.